

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF OKLAHOMA**

**JAMES EZELL, III,**

**Plaintiff,**

**vs.**

**JAMES YATES, ET AL.,**

**Defendants.**

**Case No. CIV-19-302-JHP-SPS**

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**DEFENDANTS' SECOND APPLICATION FOR ORDER DIRECTING  
PREPARATION OF *MARTINEZ* REPORT AND HOLDING IN ABEYANCE/SET  
DEADLINE FOR ANSWER AND/OR DISPOSITIVE MOTIONS**

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COME NOW Defendants Hininger, Yates, Gentry, Underwood, Perez, Patterson, Ade, Pfaff, Hoover, Keys, Bullock, Pierce and Smith by and through their attorney of record Darrell L. Moore, OBA 6332 of J. Ralph Moore, P.C., hereby making their second application to the Court for an Order holding in abeyance Defendants' time to Answer, setting an alternate deadline for filing an answer and/or dispositive motions, and, requiring the preparation and submission of a *Special Report*. In support of this application, Defendants state as follows:

1. Plaintiff has filed an Amended complaint with this Court pursuant to 42 U.S.C. § 1983. Plaintiff James Ezell, III, ODOC # #237370, is a person in the custody of the Oklahoma Department of Corrections and is presently confined in a penal institution in the State of Oklahoma. Plaintiff alleges in his complaint that Defendants violated his civil rights. Specifically, Plaintiff asserts that the Defendants have violated his First, Eight and Fourteenth Amendment rights.

2. The United States Court of Appeals for the Tenth Circuit, in Martinez v. Aaron, 570 F.2d 317 (10<sup>th</sup> Cir. 1978), held that in an inmate litigation case it was an appropriate step for the District Court to Order prison officials to prepare an administrative record reviewing a plaintiff's allegations so as to enable the Court to decide preliminary issues. Several years later, in Hall v. Bellmon, 935 F.2d 1106, 1109 (10<sup>th</sup> Cir. 1991), the Tenth Circuit Court of Appeals stated: "When the pro se plaintiff is a prisoner, a court-authorized investigation and report by prison officials (referred to as a *Martinez* report) is not only proper, but may be necessary to develop a record sufficient to ascertain whether there are any factual or legal bases for the prisoner's claims."

3. CoreCivic, Inc., owns and operates the Davis Correctional Facility, Holdenville, Oklahoma. Defendants Yates, Gentry, Underwood, Perez, Patterson, Ade, Pfaff, Hoover, Keys, Bullock, Pierce and Smith are currently, or were at the time they were served, employed by CoreCivic at Davis Correctional Facility. The Oklahoma Department of Corrections and CoreCivic have contracted to house prisoners at the medium security/maximum security prison facility named "Davis Correctional Facility."

4. Defendants have previously made a similar motion, on November 22, 2019. That Motion [Doc# 44], was denied by the Court on December 18, 2019, Magistrate Shreder stated in his minute that while the motion was denied, Defendants were granted leave to re-urge the motions after service of the amended complaint. [Doc# 53]. Defendants Keys, Bullock, Pierce, Smith were served on January 17, 2020.

5. Defendants request the Court issue an Order directing officials responsible for the operation of Davis Correctional Facility to prepare an administrative report for submission to the Court, consistent with the Martinez and Hall holdings. Defendants

request authority to obtain and review all pertinent records including, but not limited to, medical and psychiatric records. Defendants further request the Court issue an Order holding in abeyance further discovery and their time to file an Answer and/or file dispositive motions until such time as a *Special Report* has been prepared and filed with the Court.

WHEREFORE, premises considered, Defendants hereby request the Court enter an Order requiring and authorizing Davis Correctional Facility prison officials to prepare and file a Special Report; and, an Order setting deadlines for the filing of an answer and/or dispositive motion; and, for any and all further relief to which the Defendants may be entitled.

Respectfully submitted,  
Defendants Hininger, Yates, Gentry,  
Underwood, Perez, Patterson, Ade, Pfaff,  
Hoover, Keys, Bullock, Pierce and Smith

BY: 

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*Certificate of Service*

☐ I hereby certify that on January 21, 2020, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing. Based on the records currently on file, the Clerk of Court will transmit a Notice of Electronic Filing to the following ECF registrants: (insert names)

☒ I hereby certify that on January 21, 2020, I served the attached document by regular US Mail on the following, who are not registered participants of the ECF System:

James Ezell, III  
237370  
Davis Correctional Facility  
6888 E 133rd Rd  
Holdenville, OK 74848



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DARRELL L. MOORE